ACCESS, OPENNESS, ACCOUNTABILITY:

developing a *LOBBYIST REGISTRATION ACT*

Department of Justice

Government of Newfoundland and Labrador

November 5, 2004

Government of Newfoundland & Labrador

105-05837/

INTRODUCTION

"Above all else, a government must be accountable and responsive to the people. Elected officials are the people's representatives, the people's voice, and must at all times act in the best interests of the Province as a whole...." - **Danny Williams**

Purpose

Government relies on input from all Newfoundlanders and Labradorians to develop policies and programs that serve the best interests of the province. Listening to stakeholders allows government to capture not only the views of those most affected, but also a broad range of relevant knowledge and expertise.

The public wants greater participation in government decision-making and is contributing more and more to public policy development. In turn, government is ensuring public access to the decision-making process through strong transparency mechanisms and consultation. There is a growing expectation, nationally and provincially, that government operations and decision-making should be open and accountable to the public.

Government is building a foundation of access, openness and accountability through legislation and good governance practice. As part of this process, it also plans to further promote transparency by introducing legislation to regulate the activity of lobbyists in this province.

Free and open access to government is an important right of citizenship and should not be impeded. However, government decision-makers and the public should have information on who is attempting to influence public policy decisions. Therefore, government is proposing to establish a public registry of paid lobbyists and a Code of Conduct that defines acceptable and appropriate lobbying practices.

Research and Consultation

In keeping with the principles of openness and accountability, government is seeking input from stakeholders and the general public in the development of this legislation. Government has already given careful consideration as to what might be included in the *Lobbyist Registration Act*. The Department of Justice has conducted an extensive review of similar legislation from other jurisdictions and has identified the key elements and issues, the main provisions of which are outlined in this document.

Government intends to introduce legislation that will build upon the best elements of similar federal and provincial legislation (specifically, Acts now in force in Nova Scotia, Quebec, Ontario, British Columbia and Ottawa). We will incorporate the lessons learned from these other jurisdictions and, based on stakeholder and public input, will craft a Bill that best promotes the objectives of access, openness and accountability. Finally, it will be brought before the House of Assembly for debate by the elected representatives of the people of Newfoundland and Labrador. Government wants to enact legislation that is in the best interest of the whole province.

QUESTIONS FOR PUBLIC DISCUSSION

In considering potential regulation of lobbyists in this province, Newfoundlanders and Labradorians are asked to address the following:

1. To what extent should the province regulate lobbyists?
2. What types of activities should be regulated?
3. Who should be required to register?
4. What information should be required of those who register?
5. How should this information be disclosed?
6. How should the system be administered?
7. What fees should be applied, and to whom?
8. What, if any, acts or behavior should be prohibited?
9. How should compliance be enforced?
10. To what extent should government require lobbyists to adhere to a Code of Conduct?

Please forward written comments or submissions by November 30, 2004 to:

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Submissions can also be

E-mailed to: lobbyistlegislation@gov.nl.ca

Faxed to: 709-729-5645

DEFINITIONS - *what and who*

WHAT IT IS

Lobbying, when conducted appropriately, is a legitimate activity through which individuals and groups can educate government about their issues and objectives, and thus influence public policy and program decisions. Volunteers with not-for-profit or grass-roots organizations sometimes undertake lobbying. Lobbying is also conducted by paid professionals, when organizations (whether commercial or non-profit) hire them to bring a particular message to key decision-makers.

It is the latter activity, paid lobbying, that government is seeking to regulate. Open and transparent registering and recording of paid lobbying activities will ensure that public office holders and the general public know who is working to influence government decision-making and the public policy decisions they are attempting to influence.

> It is proposed that ***lobbying*** would be defined so as to mean "to communicate, for pay or other benefit, with a *public office holder* in an attempt to influence public

Decisions that might be subject to lobbying include both general issues (for example, the content of legislation, policies or program criteria) and specific circumstances (for example, the award of a grant, funding contribution or contract).

Not all communication with a public office holder, however, would be subject to the new law. For example, when the government issues written requests for comment on an issue, the responses would not be considered to be lobbying that must be registered or reported.

Other examples of communication with a public office holder that would not require registration or reporting under a *Lobbyist Registration Act* include:

- submissions to Members of the House of Assembly (MHAs), in their official capacities as MHAs, by or on behalf of their constituents
- on-the-record submissions to a committee of the House of Assembly or to any body or person with jurisdiction under a given piece of legislation
- submissions to a public office holder about enforcement, interpretation or application of legislation or regulations, or administration of a policy, program, directive or guideline with respect to the person, partnership or organization being represented
- communication by a trade union regarding administration or negotiation of a collective agreement
- communication by a trade union representing a member or former member who is or was employed in the public service
- communication by an unpaid member of a voluntary organization, about an issue of concern to that organization

WHO IS INVOLVED

Decision-makers

To influence government decisions, lobbying has to reach the decision-makers.

> It is proposed that ***public office holder*** would be defined so as to mean "a person occupying an elected, appointed or other employment position in the House of Assembly, as well as officers and employees of provincial government

The term "public office holder" is proposed to include:

- members, officers and servants of the House of Assembly, and their staff;
- officers, directors and employees of government departments, agencies, boards and commissions;
- persons appointed by the Cabinet or a Minister to any office or body; and
- officers or employees of the government, or employees of officers or Ministers not otherwise specified.

It is proposed that the following will *not* be considered to be public office holders under the *Act*:

- elected municipal representatives and council employees;
- judges;
- justices of the peace;
- members of an administrative tribunal, exercising a judicial function;
- the Information and Privacy Commissioner; or
- the Citizens' Representative.

Lobbyists

A wide variety of individuals and organizations engage in lobbying. They may also be referred to as "advocates", "public affairs advisors" or "government relations consultants". These individuals and organizations have a right to lobby and/or to employ a person or agency to lobby on their behalf. Government's intention is not to hinder their efforts or impede their access to decision-makers, but to help prevent unfair or undue influence on government decision-makers based on an organization's ability to pay for representation. Government is seeking to regulate ***paid lobbyists***. Unpaid lobbyists will not be required to register.

> It is proposed that ***lobbyist*** would be defined so as to mean "anyone who, for pay or other benefit, carries out lobbying activity."

The proposed *Lobbyist Registration Act* would apply to both consultant lobbyists and in-house lobbyists.

Consultant lobbyist would be defined in the proposed *Act* to mean "an individual (for example, a lawyer, accountant, public relations specialist or other professional) who is paid to lobby on behalf of a client".

An ***in-house lobbyist*** would be an individual employed by a person, partnership or organization, whose lobbying activity (either individually or counted with other employees) amounts to 20 per cent of one staff member's work time over a three-month period. This would apply to individual employees and a collective of employees conducting lobbying activities.

Who would NOT be considered lobbyists under the new legislation?

Generally, public office holders acting in an official capacity would not be required to register as lobbyists. Some examples of those not considered lobbyists would be:

- members, officials or servants of the House of Assembly, and their staff
- employees in the public service of the Province
- members, officers and employees of a municipal council
- officers, directors or employees of the Newfoundland and Labrador Federation of Municipalities
- officers and employees of a school board
- officers, directors or employees of the Newfoundland and Labrador School Boards' Association
- officers, directors or employees of a health and community services board under the *Health and Community Services Act*
- officers, directors or employees of the Newfoundland and Labrador Health Care Association
- officers, directors or employees of the Newfoundland and Labrador Hospital Boards Association
- officers, directors or employees of organizations established or funded by government to provide information or advice on matters of public policy
- federal senators, MPs, elected members of the legislative assembly of another province or territory, or their staff
- employees of the government of Canada or of the government of another province
- officers, directors or employees of an aboriginal government
- officers, directors or employees of an aboriginal political organization
- members of a band council, their staff and employees of the council
- diplomatic agents, consular officers or official representatives of a foreign government operating in Canada
- officials of a specialized agency of the United Nations or any international organization that is granted privileges and immunities under an act of Parliament
- unpaid volunteers representing a voluntary organization, about an issue of concern to that organization

IMPLEMENTATION

Registration / Registry

Lobbyist legislation would work with other statutory instruments such as an *Accountability Act* to ensure openness and accountability in the public decision-making process.

Registration of paid lobbyists would provide a public record of who is seeking to influence public policy, and by what means. It will give concrete form to the principles of openness and transparency and help respond to public concern that paid lobbyists might receive preferential treatment.

More broadly, a register of lobbyists and their clients would be an effective tool for understanding the nature and scope of lobbying activity. It would provide information on what lobbyists actually do and what resources are devoted to influencing government policy. A public Registry of Lobbyists would allow such important information to enter the public domain and enable Newfoundlanders and Labradorians to hold to account those undertaking lobbying activity.

Basic Principles of the Lobbyist Registry

- Lobbyists covered by the proposed legislation would be required to disclose certain information within specified time limits.
- Information collected would be a matter of public record.
- The objective of the registry would be to ensure that the general public and public office holders know who is paid to attempt to influence government decisions.
- To protect sensitivity of some commercial information, in rare cases, the proposed *Act* would allow for registry information to be kept confidential for up to six months.

Timeframe

- It is proposed that lobbyists be required to register within 10 days of beginning an undertaking for a client; usually, this will mean within 10 days of entering into a contract with a client.
- It is further proposed that lobbyists must re-register within 30 days of each six-month anniversary of the most recent registration.

Disclosure

The disclosure required of lobbyists is proposed to include the following information:

- Lobbyist's name, business address, phone number
- Client's name and business address

  (If the client is a corporation, the name and business address of any related corporation that has a direct interest in the outcome of the lobbying activity)
- Subject matter of the lobbying
- Department or Crown agency being lobbied
- Whether the paid lobbyist has lobbied, or expects to lobby, an MHA or a member of that MHA's staff
- Sources of funding for lobbying activity
- Source and amount of any government funding received by the client
- Whether compensation for the lobbyists is contingent on success
- Lobbying techniques or specific lobbying activities planned or used

Who files?

Consultant lobbyists would be required to file this information on their own behalf; a senior officer of the employer organization would be required to file this information on behalf of ***in-house lobbyists***.

Updates

- New information or changes to a registration (including the end of an undertaking, conclusion of a project, cessation of lobbying activity or cessation of employment of an in-house lobbyist) would have to be reported within 30 days of the change occurring.
- Agreements or contracts with ***major changes*** will be considered as new undertakings and would require a new registration. For example, a new registration would be necessary if there were changes to the terms or scope of an undertaking such as the subject of lobbying.
- ***Simple changes***, such as a consultant or client's change of address, would be required to be updated in the registry but would not require a new registration.

How

Registration and updating could be done in person, by mail or fax, or on line.

Fees

- To offset the costs of the system, a registration fee would be charged.
- Based on the experience of other jurisdictions, it would likely cost more to register by mail or fax than to register on line.
- So as not to limit access by imposing too great a financial burden, non-commercial non-profit organizations that employ in-house lobbyists may be required to pay less for registration than consultant lobbyists and commercial entities.
- Information contained in the Registry should be, with some limited exceptions, available to the public, through free and convenient access.

Registrar

The proposed Registry of Lobbyists would be administered and maintained by a ***registrar of lobbyists***, appointed by the Lieutenant-Governor in Council.

The registrar's responsibilities would include:

- administering the registration process
- identifying omissions and inconsistencies, and requesting completion and corrections from the lobbyist
- informing lobbyists, public office holders, the public and others about the Registry
- ensuring that the public has access to information in the Registry

MONITORING AND COMPLIANCE

As a "check and balance" mechanism in the reporting system, Government would require Cabinet Ministers and senior public servants to report contacts with unregistered paid lobbyists. This would assist in monitoring compliance and detection of non-compliance. If contact is made by a registered lobbyist, no report of contact is required.

Prohibited Acts

Government envisions that, similar to legislation in some other jurisdictions, the proposed *Lobbyist Registration Act* would prohibit certain lobbying activities as inappropriate. These would include lobbying without proper registration and the use of confidential information by former public office holders who engage in lobbying activities after leaving office.

In addition, government is considering restricting former public office holders' post-employment lobbying activities. This would help ensure that preferential access or treatment cannot be provided to former public office holders, based on the relationship that may exist between decision-makers and those lobbyists who were once involved in the decision-making process.

A "cooling off period", for example, could apply to members and officers of the House of Assembly, as well as cabinet ministers and deputy ministers who become lobbyists for commercial entities. Government acknowledges that there may be a fine balance between allowing former public office holders to make a living and preventing them from taking undue advantage of their former position.

Offences and Penalties

The proposed *Lobbyist Registration Act* would define offences and establish fines for non-compliance, for submitting false or misleading information or for placing a public-office holder in a position of conflict of interest.

Government is considering a range of penalties for unregistered or inappropriate lobbying. Options include fines of up to $25,000 for a first offence and up to $100,000 for a second or subsequent offence, as well as forfeiture to the Crown of proceeds from inappropriate lobbying.

Offences might include:

- failure to file a timely return
- failure to provide the information required
- failure to provide the registrar with changes, new information or requested clarifications
- making false or misleading statements
- knowingly placing a public office holder in a position of real or potential conflict of interest [1]

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[1] Behavior constituting conflict of interest is defined for non-elected public office holders in the *Conflict of Interest Act, 1995* and for Members of the House of Assembly and Cabinet Ministers in Part II of the *House of Assembly Act*.

CODE OF CONDUCT

Newfoundlanders and Labradorians expect and deserve a public-sector decision-making process that they trust and respect. All participants in the process have an obligation to fulfill those expectations and to uphold the principles of accessibility, openness and accountability in order to foster public confidence and encourage participation in the democratic process.

Government proposes to establish a Code of Conduct that would set the standard of behavior for lobbyists. The Code would prescribe things that lobbyists should not do, as well as establish positive duties. The Code should, as far as is possible, be consistent with similar codes for other Canadian jurisdictions.

The people of the province would therefore not only be well-informed on who is lobbying government on what issues, but also be in a position to judge lobbyists on the basis of how they comply with the Code.

LOBBYISTS' CODE OF CONDUCT

Codes of Conduct have long been applied in this and other jurisdictions to guide the behavior of persons occupying positions of responsibility and trust. Other jurisdictions, particularly the federal, have adopted a Code of Conduct for Lobbyists. Government is proposing that a ***Code of Conduct*** accompany the *Lobbyist Registration Act* and complement its registration requirements.

The *Act* would provide for a Code that establishes standards of conduct that all lobbyists must follow when communicating with provincial public office holders. Monitoring of adherence to the Code would be the responsibility of the ***Commissioner of Lobbyists***, who may issue advisory opinions about the enforcement, interpretation or application of the *Act* or its regulations or companion documents.

The Commissioner of Lobbyists would also be responsible for investigating possible violations of the *Act* and the Code of Conduct. The power of investigation would be triggered by an alleged violation, noted by either the Commissioner or a complainant, and supported by reasonable grounds. The Commissioner would investigate, prepare a report and, if appropriate, forward it to the police.

In the event of serious or repeated breaches of the obligations imposed by the Act or the Code, the Commissioner would have the authority to prohibit or cancel registration of the lobbyist. The exercise of such power would effectively bar the lobbyist from carrying on lobbying activities for the period of the prohibition or cancellation, which cannot exceed one year in duration. In addition, there would be a right of appeal by the affected lobbyist to the Trial Division.